CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

SIR SOBHA SINGH AND SONS PRIVATE LTD.,—*Petitioner*

versus

DELHI ADMINISTRATION, DELHI AND OTHERS,—*Respondents*

Civil Writ No. 133-D of 1965

July 15, 1966

Industrial Disputes Act, (XIV of 1947)—Decision by Tribunal on a question as to whether or not an establishment falls within the definition or "industry"—Whether operates as res judicata.

Held, that the Tribunal constituted under the Industrial Disputes Act, 1947, possesses a limited jurisdiction and has not been delegated with powers of general administration to finally decide its own jurisdiction. If the Tribunal, therefore, assumes jurisdiction, by an erroneous decision, over a subject-matter which is not an industrial dispute covered by the Industrial Disputes Act, in fresh proceedings it would be open to any of the parties to show that the previous decision was without jurisdiction. On a successful attack on the jurisdiction of the Tribunal in subsequent proceedings the previous award would be by a Court of incompetent jurisdiction. It is a known rule of law that if for the purposes of deciding a question which relates to the special jurisdiction, a special Tribunal finds it necessary to decide another matter, that matter does not become a matter of special jurisdiction and a decision on it does not bind the parties. A Tribunal of limited jurisdiction may be invested with powers to deal with a subject-matter only if certain state of facts exists or it may be entrusted with jurisdiction also to determine the existence of such facts. In the former case if the Tribunal wrongly holds or assumes the existence of those facts on which its jurisdiction depends, then that decision or assumption is not final or conclusive. Industrial Tribunals do not possess power to finally and conclusively decide whether or not a particular enterprise is an industry. The earlier decision of the Tribunal on a jurisdictional fact will not, therefore, shut out an enquiry by High Court. If High Court decides that the enterprise is not an industry, the previous decision of the Tribunal on such an issue will not be final between the parties.

Petition under Articles 226 and 227 of the Constitution of India, praying that a Writ of Certiorari *quashing the interim Award of respondent No 2, dated 18th January, 1965, in I.D. No. 244 of 1961, and a Writ of* Mandamus *directing*

the respondent No. 2 to decide as to whether or not the petitioner is an Industry within the meaning of Section 2(J) of the Industrial Disputes Act, be issued and such other Writ or Order, as this Hon'ble court may deem fit, in the circumstances of the case, be issued to respondent No. 2 and awarding the costs of the petition to the petitioner.

RAMESHWAR DIAL AND R. S. OBEROI, ADVOCATES, for the Petitioner.

R. D. JAIN, ADVOCATE, for the Respondents.

ORDER

KAPUR, J.—This judgment will dispose of civil writ petitions Nos. 133-D, 195-D and 196-D of 1965. Since the parties agree that decision in civil writ No. 133-D of 1965 will govern the other two cases, I am confining myself only to the facts of the said writ petition.

An industrial dispute arose between the petitioner-company and its workmen as represented by the Delhi Commercial Employees' Sangh, respondent No. 3, and the same was referred for adjudication to the Industrial Tribunal, Delhi, *vide* I.D. No. 74 of 1957. In the above reference the petitioner-company raised a preliminary objection that it was engaged only in managing its immovable property known as "Sujan Singh Park" and was, therefore, not an industry within the meaning of section 2(j) of the Industrial Disputes Act. It is alleged by the petitiner-company that due to some wrong advice the said objection was not pressed and consequently no issue was framed on this objection. While making the award, however, Shri E. Krishnamurti, the then Presiding Officer of the Industrial Tribunal, observed—

> "At the outset I may refer to a contention raised in the written-statement, that as the company is solely engaged in supervising the maintenance of the estate, styled as 'Sujan Singh Park', it does not carry on any trade or business with the purpose of making any profits, and that the subject-matter of the reference cannot, therefore, form the subject-matter of an industrial dispute. This contention cannot be sustained. In fact, Shri Bhasin for the management have given up this contention in view of the very wide definition of the word

'industry', as contained in section 2(j) of the Industrial Disputes Act. There is no doubt at all, that the company is engaged in an undertaking, or 'calling' so as to come within the definition of the word 'industry', and there is an industrial dispute in respect of the various matters shown in the order of reference. The above contention is accordingly rejected."

It is further alleged in the writ petition that the Delhi Commercial Employees' Sangh respondent No. 3 (hereafter referred to as the Sangh), gave a notice to the petitioner-company saying *inter alia* that "the award, dated 16th May, 1959, in industrial dispute No. 74 of 1957 is terminated by us". Issue of this notice has not been denied by the Sangh. Another industrial dispute arose between the petitioner-company and its workman Shri Thakar Singh, which was referred to the Industrial Tribunal, Delhi,—*vide* Government order, dated 5th/10th August, 1961. The dispute related to the question of reinstatement of Shri Thakar Singh and was alleged to have been supported by the Sangh. The petitioner-company filed a writ petition to this Court under Article 226 of the Constitution and asked for quashing of the above reference on the ground that the petitioner-company did not carry on any industry within the meaning of section 2(j) of the Industrial Disputes Act. The Sangh filed a reply affidavit in this Court reciting *inter alia* that the question stood concluded by the earlier award of the Tribunal. When the matter came up for hearing before P. D. Sharma, J., the learned counsel for the petitioner-company prayed that the Tribunal may be directed to decide the question relating to the petitioner-company being or not being an industry as a preliminary issue and the aggrieved party will then have recourse to appropriate proceedings according to law. In pursuance of this statement P. D. Sharma, J., dismissed the writ petition as withdrawn by his order, dated 1st August, 1963, and directed the Tribunal to first decide the question whether the petitioner-company "is an industrial establishment within the meaning of this term as defined in the Industrial Disputes Act". When the matter went back to the Tribunal, it recorded the evidence of the parties and by an interim award, dated 18th January, 1965, decided that the issue as to whether the petitioner-company is carrying on an industry or not having been conclusively decided by the previous Tribunal, it could not be re-agitated because of the

interdictions by principles of *res judicata*. By this petition the petitioner-company has challenged the said interim award.

Relying on the observations of the Industrial Tribunal made in the earlier award, it has been suggested by the learned counsel for the petitioner-company that the earlier decision, based on concession, could not operate as *res judicata* as matters heard and finally decided on merits alone can estop a party from re-agitating the same. In view of my decision on the other point, which I shall presently state, it is not, in my opinion, necessary to express any views on this point.

The more formidable objection on behalf of the petitioner-company is that a decision on a question as to whether or not an establishment falls within the definition of "industry" cannot operate as *res judicata*. The argument is that the Industrial Tribunal has been conferred with a jurisdiction to decide only industrial disputes. If an establishment is not an industry, an erroneous decision by the Tribunal, that it is, will not bind the parties. The jurisdiction of the Tribunal, which is a Tribunal of limited jurisdiction, according to the learned counsel for the petitioner-company, depends on the establishment being an industry. If it is not an industry then the decision would be by a Tribunal having no jurisdiction to deal with the matter. I think, there is force in this contention which finds support from a decision of the Calcutta High Court in *D. P. Dunderdele and others* v. *G. P. Mukherjee and another* (1). It was there decided that an earlier decision of an Industrial Tribunal holding that it had jurisdiction to decide a dispute between a firm of solicitors and their employees did not operate as *res judicata*. The Tribunal constituted under the Industrial Disputes Act possesses a limited jurisdiction and has not been delegated with powers of general administration to finally decide its own jurisdiction. If the Tribunal, therefore, assumes jurisdiction, by an erroneous decision, over a subject-matter which is not an industrial dispute covered by the Industrial Disputes Act, I think in fresh proceedings it would be open to any of the parties to show that the previous decision was without jurisdiction. On a successful attack on the jurisdiction of the Tribunal in subsequent proceedings the previous award would be by a Court of incompetent jurisdiction. It is a known rule of law that if for the purposes of deciding a question which

(1) A.I.R. 1958 Cal. 465.

relates to the special jurisdiction, a special Tribunal finds it necessary to decide another matter, that matter does not become a matter of special jurisdiction and a decision on it does not bind the parties. A Tribunal of limited jurisdiction may be invested with powers to deal with a subject-matter only if certain state of facts exists or it may be entrusted with jurisdiction also to determine the existence of such facts. In the former case if the Tribunal wrongly holds or assumes the existence of those facts on which its jurisdiction depends, then that decision or assumption is not final or conclusive. Industrial Tribunals do not in my opinion, possess power to finally and conclusively decide whether or not a particular enterprise is an industry. The earlier decision of the Tribunal on a jurisdictional fact will not, therefore, shut out an enquiry by this Court. If this Court decides that the enterprise is not an industry, the previous decision of the Tribunal on such an issue will not be final between the parties. On behalf of the Sangh strong reliance has been placed on the dicision of their Lordships of the Supreme Court in *Burn & Co.* v. *Their Employees* (2). The other cases relied upon by the Sangh are—

(1) *Elphinstone Spinning and Weaving Mills Company, Ltd.* v. *Its Workmen* (3);

(2) *Walford Transport, Ltd.* v. *First Industrial Tribunal, West Bengal, and others* (4);

(3) *Varahalakshmi Rice and Oil Mills and others* v. *Industrial Tribunal, Hyderabad, and another* (5); and

(4) *Trichy-Srirangam Transport Company (Private) Ltd.* v. *Industrial Tribunal, Madras, and others* (6).

In *Burn & Co.'s case*, their Lordships of the Supreme Court decided that though section 11, Civil Procedure Code, is in terms inapplicable to the industrial disputes but the principle underlying

(2) A.I.R. 1957, S.C. 38.
(3) (1960) 1 L.L.J. 381.
(4) (1961) II L.L.J. 25.
(5) (1960) II L.L.J. 473.
(6) (1959) II L.L.J. 515.

it, which is founded on sound public policy, for all times governs even the proceedings before the Industrial Tribunals. In the case before the Supreme Court the earlier decision of the Tribunal related to pay scales and, therefore, the question of jurisdiction based on a decision regarding a collateral matter did not arise. The same distinction would obtain with respect to the other cases relied upon by the Sangh. No doubt, the rule of *res judicata* is based on wisdom of experience and is intended to secure finality of litigation so as to avoid a person being vexed twice over for the same cause, but its scope cannot be extended beyond its legitimate limits, for the rule is merely one of convenience and not of absolute justice. If the proposition sought to be laid down on behalf of the Sangh were to be accepted, it would mean that in every case where the Tribunal assumes jurisdiction, which in fact it has none, over a subject-matter by an erroneous decision, that will bind the parties for all times to come. I cannot see why a party cannot in subsequent proceedings say that the previous decision of the Tribunal, being a decision on a collateral or a jurisdictional fact by a Court of limited jurisdiction, is not conclusive between them. In this view, it must be held that the Tribunal committed an error apparent on the face of the record in holding that the previous decision operated as *res judicata*. The writ petitions are, therefore, allowed and the interim awards, dated 18th January, 1965, in all the three cases, are quashed. The matter will go back to the Tribunal for decision in accordance with law. Both the parties have expressed a desire that they should be provided with a further opportunity to adduce evidence on this issue. I, therefore, direct the Tribunal to give that opportunity to the parties. In the circumstances of the case, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SOM PARKASH AND OTHERS,—*Petitioners*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 508 of 1963

July 18, 1966

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 19(4)—Notification issued under fixing the rent, at 6 times the land revenue for unauthorised possession of land —Whether valid.